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ONE HUNDRED NINTH CONGRESS

Congress of the United States
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COMMITTEE ON THE JUDICIARY

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April 19, 2006

Mr. Will Kammer
Chief, Office of Freedom of Information
Department of Defense
1155 Defense Pentagon
Washington, DC 20301-1155

Re: Motion for Reconsideration of Denial of Fee Waiver

Dear Mr. Kammer:

I am in receipt of your September 2005 letter responding to the Freedom of Information Act (FOIA) request that I and 51 of my colleagues wrote to you on June 30, 2005, which was revised in a second letter on July 28, 2005.

I am disappointed to learn of your preliminary decision to deny our request for a fee waiver. Your decision was based partly on your belief that I and my fellow requesters will be unable to sufficiently disseminate the information to the general public to an extent that justifies such a waiver of fees. I write to request that you reconsider that determination.

A. Motion for Reconsideration of Denied Waiver of Fee Request
and Summary of Planned Dissemination of Responsive Information

We request a fee waiver and assert that the request complies with the applicable provisions of FOIA. 5 U.S.C. § 552(a)(4)(A)(iii).

In your September 2005 letter, you stated that "it is not clear how [the requesters] will disseminate the information to the general public." You considered the fact that the individuals filing this FOIA request are all Members of Congress with an ability to disseminate information to the public. But you did not find a request from 52 individual Members of Congress as compelling as a request from a House Committee, despite the noteworthy fact that seven of the

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requesters are members of the House Judiciary Committee and four are members of the House International Relations Committee. In addition, every Member of Congress is directly responsible to constituents and countless other American citizens who recognize the prominent role many of the requesting Members have taken in disseminating information on this important matter.

The Members making this request regularly publish information that is disseminated to the public and is widely available to the public at no cost. The records requested are not sought for commercial use. Rather, the requesters plan to disseminate the information as part of an ongoing effort to continuously inform our constituents and the public about governmental operations. For instance, a number of these Members have held town hall meetings in their respective districts on the government's actions leading up to the war. These meetings were widely attended; some of the town halls attracted over 1,000 members of the general public and others had to turn people away at the door due to overcapacity. Just prior to holding my own town hall meeting, I held a conference call to address the war in Iraq with thousands of people from around the country. More than 10,000 members of the general public dialed in from over 350 house parties hosted nationwide in citizens' homes, meetings halls, and even public parks.

Numerous news articles published since the United States commenced military operations in Iraq and Afghanistan reflect the significant and continued level of public interest in the records we seek. Disclosure of the requested records will contribute significantly to the public's understanding of government conduct and will provide insight into issues that continue to be of grave public concern. In addition, information from the requested documents will be incorporated into a report that my Judiciary Committee staff is currently preparing. Prior experience dictates that that report will be disseminated widely to the American public. Thousands of American citizens have downloaded from the Judiciary Committee's Minority Staff website, or have otherwise acquired, similar reports I have issued on the War in Iraq and the 2004 Presidential Election. Given this wide circulation, the responsive documents should easily meet FOIA's standard for granting a fee waiver of "contribut[ing] significantly to the public understanding of [the requested] activities or operations of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

You may view this request as either (a) a request for reconsideration of your prior denial based on our clarification of how we plan to disseminate the information to the general public, or (b) a new request for production.

B. Narrowed Request for Responsive Information

Your letter also states that our request remains too "complex" and requires "considerable time to process." Accordingly, I am willing to further refine this request in an effort to make it

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more manageable.

In our initial letter, we requested a wide range of memoranda and other documents relating to the lead-up to military action in Iraq, dating back to President Bush's 2000 transition into office, as well as documentation relating to the following: the Downing Street Minutes of July 23, 2002; the collection and analysis of intelligence related to Iraq and its possession of weapons of mass destruction, and similar procedures employed as related to ties between Iraq and al Qaeda for the past ten years; planning and preparation for military action in Iraq between 1995 and 2002; and finally, the stated mission and overall objective of sorties flown over Iraq and the means by which targets were selected for the dropping of bombs on such targets. This requested information was categorized into five numbered paragraphs in the letter of June 30, 2005.

As you know, we have already refined our request in a letter dated July 28, 2005. We are willing to further narrow the request by eliminating the first paragraph, which asked for "all original statements, documents, press releases, and the like, and copies of the same publicly issued, or available related to the lead-up to military action in Iraq, beginning with President Bush's transition into office in 2000 through the present." The elimination of this portion of the request leaves only four areas for which we are requesting information. This should make the request more manageable and should reduce the cost of responding to the request.

Please include all applicable records that are:

- held by constituent entities of the agency,
- incorporated into the agency's files and read by the agency, or
- held by entities within the Executive Office of the President and not otherwise protected from disclosure by the Presidential Records Act.

We recognize that several of FOIA's exemptions relating to the protection of national security interests and the government's deliberative processes may pertain to this request. Insofar as you feel these exemptions do apply, we respectfully reiterate our request that you only redact sensitive information and still provide responsive memoranda, correspondence and other documentation in redacted form. This should include any e-mail correspondence, including the disclosure of the identities of correspondents, the mailing date for said correspondence, and the message's subject line, wherever possible. Similarly, because the national security exemption only protects information whose disclosure would impair national security, we expect that any documentation containing intelligence that is now publicly known to be released in its original form or redacted only as necessary to protect the disclosure of information still falling within the appropriate FOIA exemption.

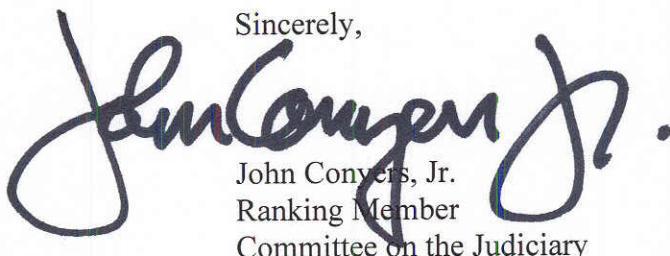
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If our request is denied in whole or in part, we ask that you justify all deletions, omissions, or denials by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

We look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Thank you in advance for your prompt attention and response to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Conyers Jr.", with a large, stylized flourish at the end.

John Conyers, Jr.
Ranking Member
Committee on the Judiciary